



February 12, 2001

Mr. Craig H. Smith
Deputy General Counsel
Texas Workers' Compensation Commission
4000 South IH-35
Austin, Texas 78704-7491

OR2001-0523

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144264.

The Texas Workers' Compensation Commission (the "commission") received a request for a copy of a report relating to an investigation of the commission's Spinal Surgery Division and certain named employees who allegedly sequestered records, failed to respond to records, denied that faxes were received, made medical decisions, delayed necessary treatment, and altered treatment for workers' compensation claimants. The requestor also seeks the names of the injured workers who were the victims of the alleged wrongdoing by the employees.¹ You state that the commission has not conducted an investigation of the Spinal Surgery Division or the named employees, and the commission has not found that either of the named employees engaged in the alleged wrongdoing. You indicate that the commission conducted an audit of the Spinal Surgery Division, including an audit of the files of the named employees, that you will be releasing to the requestor. With respect to the request for the names of patients who were the victims of the alleged wrongdoing, you claim that you have no responsive information because no such wrongdoing has been found. However, you state that the commission has a list of patients whose files were found to be disorganized. You claim that this list is confidential under section 402.083 of the Labor Code. We have considered your arguments and reviewed the submitted information.

¹The requestor further asked the commission to respond to an alleged victim of the wrongdoing and send a copy of the response to himself. We note, however, that the Public Information Act does not require a governmental body to prepare new information in response to a request for information. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 (1992), 362 (1983).

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 402.083 of the Labor Code provides that “[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the commission except as provided by this subtitle.” This office has interpreted section 402.083 to protect only that “information in or derived from a claim file that explicitly or implicitly discloses the identities of employees who file workers’ compensation claims.” Open Records Decision No. 619 at 10 (1993). You state that the patients’ names contained in the submitted lists were derived from the commission’s claim files. Therefore, we find that the patients’ names are confidential under section 402.083 of the Labor Code and must be withheld from disclosure under section 552.101 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

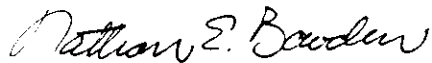
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Nathan E. Bowden".

Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/er

Ref: ID# 144264

Encl: Submitted documents

cc: Dr. Eric H. Scheffey, M.D.
9343 N. Loop East, Suite 600
Houston, Texas 77029
(w/o enclosures)